

## CRAVATH, SWAINE & MOORE LLP

WORLDWIDE PLAZA  
825 EIGHTH AVENUE  
NEW YORK, NY 10019-7475

TELEPHONE: +1-212-474-1000  
FACSIMILE: +1-212-474-3700

CITYPOINT  
ONE ROPEMAKER STREET  
LONDON EC2Y 9HR  
TELEPHONE: +44-20-7453-1000  
FACSIMILE: +44-20-7860-1150

WRITER'S DIRECT DIAL NUMBER  
+1-212-474-1760

WRITER'S EMAIL ADDRESS  
MPaskin@cravath.com

JOHN W. WHITE  
EVAN R. CHESLER  
STEPHEN L. GORDON  
ROBERT H. BARON  
DAVID MERCADO  
CHRISTINE A. VARNEY  
PETER T. BARBUR  
MICHAEL S. GOLDMAN  
RICHARD HALL  
JULIE A. NORTH  
ANDREW W. NEEDHAM  
STEPHEN L. BURNS  
KATHERINE B. FORREST  
KEITH R. HUMMEL  
DAVID J. KAPPOS  
DANIEL SLIFKIN  
ROBERT I. TOWNSEND, III  
PHILIP J. BOECKMAN  
RONALD E. CREAMER JR.  
WILLIAM V. FOGG  
FAIZA J. SAEED  
RICHARD J. STARK  
THOMAS E. DUNN  
MARK I. GREENE  
DAVID R. MARRIOTT  
MICHAEL A. PASKIN  
ANDREW J. PITTS  
MICHAEL T. REYNOLDS

ANTONY L. RYAN  
GEORGE E. ZOBITZ  
GEORGE A. STEPHANAKIS  
DARIN P. MCATEE  
GARY A. BORNSTEIN  
TIMOTHY G. CAMERON  
KARIN A. DEMASI  
DAVID S. FINKELSTEIN  
RACHEL G. SKAISTIS  
PAUL H. ZUMBRO  
ERIC W. HILFERS  
GEORGE F. SCHOEN  
ERIK R. TAVZEL  
CRAIG F. ARCELLA  
LAUREN ANGELILLI  
TATIANA LAPUSHCHIK  
ALYSSA K. CAPLES  
JENNIFER S. CONWAY  
MINH VAN NGO  
KEVIN J. ORSINI  
MATTHEW MORREALE  
JOHN D. BURETTA  
J. WESLEY EARNHARDT  
YONATAN EVEN  
BENJAMIN GRUENSTEIN  
JOSEPH D. ZAVAGLIA  
STEPHEN M. KESSING  
LAUREN A. MOSKOWITZ

DAVID J. PERKINS  
J. LEONARD TETI, II  
D. SCOTT BENNETT  
TING S. CHEN  
CHRISTOPHER K. FARGO  
DAVID M. STUART  
AARON M. GRUBER  
O. KEITH HALLAM, III  
OMID H. NASAB  
DAMARIS HERNÁNDEZ  
JONATHAN J. KATZ  
DAVID L. PORTILLA  
RORY A. LERARIS  
KARA L. MUNGOVALL  
MARGARET T. SEGALL  
NICHOLAS A. DORSEY  
ANDREW C. ELKEN  
JENNY HOCHENBERG  
VANESSA A. LAVELY  
G.J. LIGELIS JR.  
MICHAEL E. MARIANI  
LAUREN R. KENNEDY  
SASHA ROSENTHAL-LARREA  
ALLISON M. WEIN  
MICHAEL P. ADDIS  
JUSTIN C. CLARKE  
SHARONMOYEE GOSWAMI  
C. DANIEL HAAREN

EVAN MEHRAN NORRIS  
LAUREN M. ROSENBERG  
MICHAEL L. ARNOLD  
HEATHER A. BENJAMIN  
MATTHEW J. BOBBY  
DANIEL J. CERQUEIRA  
ALEXANDRA C. DENNING  
HELAN GEBREMARIAM  
MATTHEW G. JONES  
MATTHEW M. KELLY  
DAVID H. KORN  
BRITTANY L. SUKIENNIK  
ANDREW M. WARK

PARTNER EMERITUS  
SAMUEL C. BUTLER

OF COUNSEL  
MICHAEL L. SCHLER  
CHRISTOPHER J. KELLY  
KIMBERLEY S. DREXLER  
NICOLE F. FOSTER  
LILLIAN S. GROSSBARD  
KIMBERLY A. GROUSSET  
ANDREI HARASYMIAK

October 18, 2021

Moby S.P.A. v. Morgan Stanley et al., Case No. 1:21-cv-08031 (S.D.N.Y.)

Dear Judge Woods:

We write on behalf of Defendants Morgan Stanley, Morgan Stanley & Co. LLC, Massimo Piazzi, and Dov Hillel Drazin (the "Morgan Stanley Defendants") to respectfully request a briefing schedule regarding the Morgan Stanley Defendants' forthcoming motion for sanctions. The Morgan Stanley Defendants previously informed the Court of their intention to seek costs as a sanction for Moby's frivolous *ex parte* emergency motion for temporary injunctive relief (ECF Doc. Nos. 29, 32), and on the pre-motion teleconference on October 7, 2021, we agreed to defer filing such motion until after the Court decided defendants' anticipated motion to dismiss. (10/7/2021 Tr. 31:19-25, ECF Doc. No. 37.)

As the Court is aware, there will be no motion to dismiss filed in this case, because at approximately 8:30 p.m. on Thursday, October 14, Moby filed a Notice of Voluntary Dismissal without prejudice (ECF Doc. No. 36). The Court may not be aware, however, that at almost the exact same time Moby commenced a new action in state court, with substantially the same allegations and claims, but absent the federal RICO claim or any request for injunctive relief (attached hereto as Exhibit A).

This unabashed forum shopping by Moby cannot stand, particularly when viewed in conjunction with its prior *ex parte* TRO application and immediate withdrawal thereof once challenged by the Morgan Stanley Defendants. As with the *ex parte* emergency motion for injunctive relief, the Morgan Stanley Defendants expended time and money in preparing to move to dismiss Moby's claims, only to have Moby moot the issue to avoid an adverse decision and *with prejudice* dismissal. And by refileing its claims in state court, Moby has made plain that it will continue to engage in this same behavior in an apparent effort either to deter Morgan Stanley and its affiliates from freely trading bonds it owns, or to extract as-of-yet unspecified commercial concessions.

Moby has repeatedly and without any underlying good faith basis enlisted multiple courts in the United States in an effort improperly to influence the outcome of the court-

supervised restructuring currently proceeding in Italy. Were Moby's conduct over the past three weeks not sufficient evidence of this litigant's bad faith, the Court need look no farther than February 2021, when Moby engaged in the same tactic against a different group of its creditors in state court. Moby's counsel made clear during the October 7 hearing that filing and withdrawing that action "led, ultimately, to the agreement [on a restructuring plan] that we now have in place with the defendants in that action", and invited the same outcome here. (10/7/2021 Tr. 23:20-24:1, ECF Doc. No. 37.)

Accordingly, the Morgan Stanley Defendants intend to move for sanctions in the form of reimbursement for the attorneys' fees and costs incurred in defending against this frivolous, bad faith action. In light of the circumstances, the Morgan Stanley Defendants prefer to have this issue resolved as expeditiously as the Court will permit. If acceptable to the Court, we propose the following briefing schedule: Thursday, October 28, 2021 for the Morgan Stanley Defendants' opening brief; Monday, November 8, 2021 for Moby's opposition; and Thursday, November 11, 2021 for the Morgan Stanley Defendants' reply.

Respectfully,

*/s/ Michael Paskin*

Michael A. Paskin

Judge Gregory H. Woods  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 2260  
New York, NY 10007

VIA ECF

Copy to:

All counsel of record.

VIA ECF